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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1D-2005-64145

ROBERT ANDREW FOLSOM
8536 Kern Canyon Road, #11
Bakersfield, California 93306

**SECOND A M E N D E D
A C C U S A T I O N**

Physical Therapist License No. PT 6484,
Respondent.

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Second Amended Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California (Board).

2. On August 23, 1973, the Board issued License Number PT 6484 to Robert Andrew Folsom (Respondent). This license was in full force and effect at all times relevant to the charges brought in this accusation and will expire on March 31, 2006, unless renewed. There is no record of prior disciplinary action against this license.

JURISDICTION

3. The Board brings this Second Amended Accusation under the authority of the following sections of the Business and Professions Code ("Code").

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1 4. Section 2609 of the Code states:

2 “The Board shall issue, suspend, and revoke licenses and approvals to practice
3 physical therapy as provided in this chapter.”

4 5. Section 2660 of the Code provides, in pertinent part:

5 “The board may, after the conduct of appropriate proceedings under the
6 Administrative Procedure Act, suspend for not more than 12 months, or revoke, or
7 impose probationary conditions upon any license, certificate, or approval issued under
8 this chapter for unprofessional conduct that includes, but is not limited to, one or any
9 combination of the following causes:

10 . . .

11 “(d) Conviction of a crime which substantially relates to the
12 qualifications, functions, or duties of a physical therapist or physical therapy
13 assistant. The record of conviction or a certified copy thereof shall be conclusive
14 evidence of that conviction.”

15 * * * *

16 “(i) Conviction of a violation of any of the provisions of this chapter or of
17 the State Medical Practice Act, or violating, or attempting to violate, directly or
18 indirectly, or assisting in or abetting the violating of, or conspiring to violate any
19 provision or term of this chapter or of the State Medical Practice Act.”

20 6. Section 2661 of the Code states:

21 “A plea or verdict of guilty or a conviction following a plea of nolo contendere
22 made to a charge of a felony or of any offense which substantially relates to the
23 qualifications, functions, or duties of a physical therapist is deemed to be a conviction
24 within the meaning of this article. The board may order the license suspended or
25 revoked, or may decline to issue a license, when the time for appeal has elapsed, or the
26 judgment of conviction has been affirmed on appeal or when an order granting probation
27 is made suspending the imposition of sentence, irrespective of a subsequent order under
28 Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of

1 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing
2 the accusation, information, or indictment.”

3 7. Section 2239 of the Code states:

4 “(a) The use or prescribing for or administering to himself or herself, of any
5 controlled substance; or the use of any of the dangerous drugs specified in Section 4022,
6 or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or
7 injurious to the licensee, or to any other person or to the public, or to the extent that such
8 use impairs the ability of the licensee to practice medicine safely or more than one
9 misdemeanor or any felony involving the use, consumption, or self-administration of any
10 of the substances referred to in this section, or any combination thereof, constitutes
11 unprofessional conduct. The record of the conviction is conclusive evidence of such
12 unprofessional conduct.”

13 8. Title 16, California Code of Regulations, section 1399.20 provides, in
14 pertinent part, that a crime shall be considered to be substantially related to the qualifications,
15 functions or duties of a person holding a license under the Physical Therapy Practice Act if “to a
16 substantial degree it evidences present or potential unfitness of a person to perform the functions
17 authorized by the license in a manner consistent with the public health, safety or welfare.”

18 9. Section 2661.5 of the Code states:

19 “(a) In any order issued in resolution of a disciplinary proceeding before
20 the board, the board may request the administrative law judge to direct any
21 licensee found guilty of unprofessional conduct to pay to the board a sum not to
22 exceed the actual and reasonable costs of the investigation and prosecution of the
23 case.

24 “(b) The costs to be assessed shall be fixed by the administrative law
25 judge and shall not in any event be increased by the board. When the board does
26 not adopt a proposed decision and remands the case to an administrative law
27 judge, the administrative law judge shall not increase the amount of the assessed
28 costs specified in the proposed decision.

1 “(c) When the payment directed in an order for payment of costs is not
2 made by the licensee, the board may enforce the order of payment by bringing an
3 action in any appropriate court. This right of enforcement shall be in addition to
4 any other rights the board may have as to any licensee directed to pay costs.

5 “(d) In any judicial action for the recovery of costs, proof of the board's
6 decision shall be conclusive proof of the validity of the order of payment and the
7 terms for payment.

8 “(e) (1) Except as provided in paragraph (2), the board shall not renew or
9 reinstate the license or approval of any person who has failed to pay all of the
10 costs ordered under this section.

11 “(2) Notwithstanding paragraph (1), the board may, in its discretion,
12 conditionally renew or reinstate for a maximum of one year the license or
13 approval of any person who demonstrates financial hardship and who enters into a
14 formal agreement with the board to reimburse the board within that one year
15 period for those unpaid costs.

16 “(f) All costs recovered under this section shall be deposited in the
17 Physical Therapy Fund as a reimbursement in either the fiscal year in which the
18 costs are actually recovered or the previous fiscal year, as the board may direct.”

19 10. Section 125.3 of the Code provides, in pertinent part, that the Board may
20 request the administrative law judge to direct a licensee found to have committed a violation or
21 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
22 and enforcement of the case.

23 **FIRST CAUSE FOR DISCIPLINE**

24 (Convictions of Crimes)

25 11. Respondent is subject to disciplinary action under section 2660, subsection
26 (d), and section 2661 of the code in that he was convicted of two crimes substantially related to
27 the qualifications, functions or duties of a physical therapist, to wit: driving under the influence
28 of any alcoholic beverage or drug, and driving with a blood alcohol level of 0.08% or more. The

1 circumstances are as follows:

2 First Conviction

3 A. On August 17, 1998, in the case entitled *People v. Robert A.*
4 *Folsom*, Case No. SM074342, the Kern County Superior Court convicted
5 respondent of driving under the influence of alcohol, in violation of Vehicle Code
6 section 23152(a), a misdemeanor. He was placed on court probation for a period
7 of five years. He participated in the Traffic and Alcohol Awareness School of
8 Kern (TAASK) Multiple Offender Program, and a notice of his completion or
9 discharge from the program was filed with the court on April 7, 2000.

10 Second Conviction

11 B. On December 18, 2004 at approximately 12:05 a.m., respondent
12 was observed driving erratically in Bakersfield, California. He was stopped by a
13 Kern County Sheriff's deputy and subjected to field sobriety tests by a California
14 Highway Patrol officer. Two breathalyzer tests indicated that respondent's blood
15 alcohol level was .17%. He was subsequently arrested and charged with
16 misdemeanor driving under the influence and misdemeanor driving with a blood
17 alcohol level of 0.08% or more.

18 C. On January 28, 2005, in the case entitled *People v. Robert Andrew*
19 *Folsom*, Case No. BM667679A, the Kern County Superior Court dismissed the
20 driving under the influence charge and respondent entered a plea of nolo
21 contendere to driving with a blood alcohol level of 0.08% or more, in violation of
22 Vehicle Code section 23152, subdivision (b), a misdemeanor. The court found
23 respondent guilty of the latter offense. Respondent was placed on probation for
24 three years, ordered to pay a fine of \$1,690, and ordered to comply with various
25 terms of probation including participation in a licensed alcohol education program
26 for 3 months or longer.

27 12. Respondent's conduct, as set forth above, constitutes unprofessional
28 conduct and respondent's license is subject to discipline pursuant to the aforementioned

provisions of the Business and Professions Code in that respondent was convicted of crimes substantially related to the qualifications, functions or duties of a physical therapist.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

13. Respondent is subject to disciplinary action under sections 2660, subdivision (i), and 2239 of the Code in that respondent engaged in unprofessional conduct as reflected in his two misdemeanor convictions involving the use or consumption of alcoholic beverages. The circumstances are as follows:

A. The facts and circumstances alleged in paragraph 11 above are incorporated here as if fully set forth.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

1. Revoking or suspending Physical Therapist License Number PT 6484, issued to Robert Andrew Folsom;
2. Ordering Robert Andrew Folsom to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: May 30, 2006.

Original Signed By: _____
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant